

EXHIBIT 13-B

TSEP CONTRACT FOR EMERGENCY GRANTS

TREASURE STATE ENDOWMENT PROGRAM

CONTRACT #MT-TSEP-EG _____

FOR _____, MONTANA, _____ PROJECT

This Contract is entered into by _____, Montana, herein referred to as "the Grantee" and the State of Montana Department of Commerce, Helena, Montana, herein referred to as "the Department."

WITNESSETH, that the Grantee and the Department mutually agree as follows:

Section 1. PURPOSE

The purpose of this Contract is to provide funding for project activities described in Section 5 of this Contract to resolve an emergency situation with the Grantee's _____ System.

Section 2. APPLICATION INCORPORATED BY REFERENCE

The information submitted by the Grantee as stated in the Emergency Grant Application Review and Action Taken Form is incorporated into this Contract by reference and the representations made in it are binding upon the Grantee.

Section 3. ACCEPTANCE OF TSEP PROGRAM REQUIREMENTS

- (a) The Grantee will comply with all applicable state laws and regulations and administrative directives and procedures established by the Department.
- (b) The Grantee agrees to repay to the Department any funds advanced to the Grantee under this Contract which the Grantee, its subcontractors or subrecipient entities, or any public or private agent or agency to which the Grantee delegates authority to carry

out portions of this Contract, expends in violation of the terms of this Contract or the state statutes and regulations governing the Program.

Section 4. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect when signed by all parties to the Contract and will terminate upon final project closeout by the Department.

Section 5. SCOPE OF WORK

The Grantee will engage in activities as set forth in the Emergency Grant Application Review and Action Taken Form **[and as supplemented with additional information dated ____]** which by this reference **[is] [are]** made a part of this Contract. The major components of the project include: _____. *(Add only if applicable)* The project will be constructed as described in engineering plans and specifications submitted by the Grantee **[and approved by the Montana Department of Environmental Quality]**.

Section 6. BUDGET

The Grantee has estimated that the project will cost \$_____ and will contribute a minimum of \$_____ towards the cost of the project. Additional funding in the amount of \$_____, will be obtained from _____.

Section 7. AMOUNT OF GRANT AND METHOD OF REIMBURSEMENT

- (a) The Department will use funds from the Treasure State Endowment Special Revenue Account as authorized by 17-5-703 and 90-6-701 through 90-6-710, MCA, and appropriated by the 58th Legislature in House Bill 11.
- (b) The Department agrees that it will reimburse the Grantee for successfully completing the activities set forth in Section 5. SCOPE OF WORK, as the Grantee incurs project costs. Upon approving the Grantee's Request for Funds the Department will reimburse all eligible expenses as provided in this Contract. The Department will authorize the Grantee to draw up to \$_____ against the TSEP funding. In drawing against the reserved amount, the Grantee will follow the instructions supplied by the Department.
- (c) If the actual cost of the project is less than the estimate by the Grantee, the Department reserves the right to reduce the amount that will be paid to the Grantee by the same amount.

- (d) The Department will reimburse the Grantee for approved eligible expenses according to the documentation submitted by the Grantee to support the expenditures. The Department will not reimburse the Grantee for any expenses not clearly and accurately supported by the Grantee's records.
- (e) If the Grantee is unable to comply with the terms and conditions of this Contract, any costs incurred will be the Grantee's sole responsibility.
- (f) If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department may revoke the Grantee's authority to draw against the reservation described in this Contract until the Department and the Grantee agree on a plan to remedy the deficiency.

Section 8. LIAISON

_____, TSEP Program Specialist, is the Department's liaison with the Grantee regarding all administrative and technical matters arising under this Contract. _____, _____, is the Grantee's liaison with the Department.

Section 9. ACCESS TO RECORDS AND PROJECT MONITORING

- (a) The Grantee will maintain adequate records of its performance under this Contract, in compliance with the Department's administrative requirements and state law, and will allow access to these records at any time during normal business hours by the Department or its agents, and, when required by law, the Montana Legislative Auditor. These records will be kept in the Grantee's offices in _____, Montana.
- (b) The Department or its agents may monitor and inspect all phases and aspects of the Grantee's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of records and accounts. The Department may present specific areas of concern regarding these matters to the Grantee, providing the opportunity for the Grantee to propose corrective actions acceptable to the Department.

Section 10. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Grantee under this Agreement will be on the basis of merit and qualification, and the Grantee will not discriminate against any person on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. As

used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

Section 11. AVOIDANCE OF CONFLICT OF INTEREST

The Grantee will comply with sections 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

(Substitute the following for contracts with Tribal governments.) The Grantee agrees that none of its employees, officers or agents will participate in the selection of a contractor to perform work under this Contract or in the award or administration of a contract to be funded under this Contract if a conflict of interest, real or apparent, would arise. A prohibited conflict would arise if:

- (a) The employee, officer, or agent,
- (b) Any member of his or her immediate family,
- (c) His or her partner, or
- (d) An organization that employs, or is about to employ, any of the persons described above,

has a financial or other interest in the firm selected for award.

In addition, the Grantee agrees that none of its officers, employees, or agents will solicit or accept gratuities, favors, or anything of monetary value from contractors, subcontractors, or potential contractors and subcontractors, who provide or propose to provide services relating to the project funded under this Contract.

Section 12. PROPERTY MANAGEMENT AND EQUIPMENT

Title to real property or equipment acquired under a grant or subgrant will vest upon acquisition in the Grantee or subgrantee respectively.

Section 13. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any contractor or subcontractor in furtherance of this Contract are the property of the Grantee and the Department which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating to these materials. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the Department and the Grantee.

Section 14. MODIFICATION AND ASSIGNABILITY OF CONTRACT

This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this Contract, are valid or binding. This Contract may not be enlarged, modified, or altered except upon written agreement, and does not imply any continuing commitment by the State of Montana beyond the termination date noted herein. The Grantee accepts responsibility for adherence to the terms of this Contract by subcontractor or subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Contract.

Section 15. INDEMNIFICATION

- (a) The Grantee waives any and all claims and recourse against the Department and the State of Montana, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Grantee's or any subrecipients' performance under this Contract.
- (b) Further, the Grantee will indemnify, hold harmless, and defend the Department and the State of Montana against any and all claims, demands, damages, costs, expenses, or liability arising out of the Grantee's or any subrecipients' performance of this Contract. In the event the Department or the State of Montana is named as a codefendant in any action relating to activities to be performed by the Grantee or subrecipient under this Contract, the Grantee will notify the Department of such fact and will represent the Department in the legal action unless the Department undertakes to represent itself as a codefendant in the legal action in which case the Department will bear its own litigation costs, expenses, and attorneys' fees.

Section 16. CONTRACT AMENDMENT

The Department will consider requests by the Grantee to amend this Contract. However, before the Department will approve an amendment, the Grantee must clearly demonstrate that the modification is justified and will enhance the overall impact of the original project.

Section 17. TERMINATION OF CONTRACT

This Contract may be terminated as follows:

- (a) Termination Due to Noncompliance with Contract Terms. If the Department determines that the Grantee has failed to comply with the general terms and conditions or any special conditions of this Contract or the project schedule, and if upon notification of the

defect the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the date of completion. The Department will promptly notify the Grantee in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.

- (b) Effect of Termination. In the event of termination due to the Grantee's failure to comply with the terms of this Contract or the project's adverse environmental impact, any costs incurred will be the responsibility of the Grantee. However, at its discretion, the Department may approve requests by the Grantee for reimbursement of expenses incurred. The Department's decision to authorize payment of any costs incurred or to recover expended TSEP funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Grantee to comply with the terms of this Contract and on whether the failure to comply with the terms of this Contract resulted from circumstances beyond the Grantee's control.

Section 18. CONSTRUCTION AND VENUE

This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the First Judicial District in and for the County of Lewis and Clark, State of Montana.

(Substitute the following for contracts with Tribal governments.)

- (a) In the event that a dispute or claim arises under this Contract, the laws of the State of Montana will govern as to the interpretation and performance of this Contract, and any judicial proceeding concerning the terms of this Contract will be brought in the District Court of the First Judicial District of the State of Montana;
- (b) The Grantee's Tribal government waives the Tribes immunity from suit in State court on any issue specifically arising from this Contract; and
- (c) The Grantee's Tribal government waives any right it may have with respect to this Contract to exhaust tribal remedies.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed.

_____ (Grantee) Department of Commerce

(Chief Elected Official)

(Name), Director

Date: _____

Date: _____

ATTEST:

Date: _____